



PUBLIC NOTICE

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DA 16-1164
Released: October 13, 2016

MEDIA BUREAU SEEKS COMMENT ON UPDATES TO CATALOG OF REIMBURSEMENT EXPENSES

MB Docket No. 16-306
GN Docket No. 12-268

Comments Due: November 14, 2016
Reply Comments Due: November 29, 2016

Background. In the *Incentive Auction Report and Order*,¹ the Commission set forth the process for reimbursing eligible broadcasters and Multichannel-Video-Programming-Distributors (MVPDs) from the \$1.75 billion TV Broadcaster Relocation Fund (Fund) established by the Spectrum Act.² The Commission delegated authority to the Media Bureau to, *inter alia*, develop the form to be used by entities claiming reimbursement from the Fund and to develop a catalog of eligible reimbursement expenses (Catalog) for reimbursement-eligible entities to use as a guide.³ As the Commission has explained, the Catalog is not intended to be a definitive list of all reimbursable expenses.⁴ Rather, it is a means of facilitating the process of claiming reimbursement by setting forth categories of expenses that are most likely to be incurred by relocated broadcasters and MVPDs.

The Commission initially engaged Widelity, Inc. (Widelity), in 2013 to develop a catalog of potentially eligible expenses that were likely to be incurred by broadcasters and MVPDs as a result of the post-incentive auction channel transition, which we adopted after seeking comment.⁵ We previously

¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6812-6826, paras. 598-636 (2014), *affirmed*, *National Association of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) (*Incentive Auction R&O*).

² *Middle Class Tax Relief and Job Creation Act of 2012*, Pub. L. No. 112-96, §§ 6402, 6403, 125 Stat. 156 (2012) (Spectrum Act) at § 6403(d)(1); 47 U.S.C. § 309(j)(8)(G)(iii)(I). The Spectrum Act requires the Commission to “reimburse costs reasonably incurred” by broadcast television licensees that are involuntarily reassigned to new channels as a result of the incentive auction and by MVPDs in order to continue carrying the signals of licensees reassigned to new channels as a result of the incentive auction. 47 U.S.C. § 1452(b)(4)(A)(i)-(ii).

³ See *Incentive Auction R&O*, 29 FCC Rcd at 6820, para. 619 (delegating authority to the Media Bureau “to establish the timing and calculate the amount of allocations to eligible entities from the Reimbursement Fund, develop a final Catalog of Eligible Expenses, and make other determinations regarding eligible costs and the reimbursement process.”).

⁴ *Id.* at 6817-18, para. 611 (stating that the Catalog “will contain a list of many, but not necessarily all, of the modifications” an eligible entity may have to make).

⁵ See *Media Bureau Seeks Comment on Catalog of Eligible Expenses and Other Issues Related to the Reimbursement of Broadcaster Channel Reassignment Costs*, GN Docket No. 12-268, Public Notice, 28 FCC Rcd 13787 (MB 2013) (*Catalog of Expenses Comment PN*). See also *Media Bureau Seeks Comment on Widelity Report* (continued....)

sought comment on,⁶ but have not yet adopted, baseline cost estimates for the eligible expenses listed in this Catalog.⁷ In order to update the prior results, the Commission has again engaged Widelity to determine whether any of the expenses listed in the Catalog, and whether the baseline costs previously proposed, should be modified or supplemented so that the Catalog more accurately reflects the current market for reimbursement-eligible services and equipment.

Comment Sought on Updated Catalog. We seek comment on the proposed updated Catalog, which is attached to this Public Notice as the Appendix.⁸ The proposed changes to the Catalog include several increases in baseline costs previously proposed; the addition of new categories of expenses; and the removal of other categories of expenses which have been discontinued or will likely not be required due to technological advancements.

After considering the comments we receive, we will adopt an updated Catalog, including baseline costs for listed expenses. Consistent with our past practice, we will make the Catalog available as a stand-alone document on the Commission's website for reimbursement-eligible entities to consult. It will also be embedded as part of the on-line Reimbursement Form, FCC Form 2100, Schedule 399, which will be used by entities seeking reimbursement to file estimated costs and reimbursement claims for actual costs incurred. After finalizing the Catalog, we will resubmit the Reimbursement Form to OMB, for approval under the PRA of the changes resulting from the modifications to the Catalog, as well as other minor modifications designed to help filers describe their claims.⁹

Comment Sought on Methodology for Updating Baseline Costs during Reimbursement Period. We seek comment on a methodology for adjusting the baseline costs included in the Catalog throughout

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and Catalog of Potential Expenses and Estimated Costs, GN Docket No. 12-268, Public Notice, 29 FCC Rcd 2989 (MB 2014) (*Widelity Report PN*). After considering the comments, we released a public notice that announced that we would submit the Reimbursement Form to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act (PRA), adopted the Catalog, and provided guidance on certain aspects of the reimbursement process. *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses*, GN Docket No. 12-268, Public Notice, 30 FCC Rcd 11701 (MB 2015) (*Reimbursement Form PN*).

⁶ See *Widelity Report PN*.

⁷ See *Reimbursement Form PN*, 30 FCC Rcd at 11702, n.9 ("We will adopt the baseline estimated costs for the expenses in the catalog in a future Public Notice."). The Commission has explained previously that the Catalog will include a "predetermined estimate of the cost, or range of costs, for equipment and other expenses" listed in the Catalog. See *Incentive Auction R&O*, 29 FCC Rcd at 6817-18, para. 611. When submitting its estimated relocation costs, an eligible entity may select either the predetermined cost estimate from the Catalog or provide its own individualized estimate. *Id.* An eligible entity that rejects the predetermined cost estimate in the Catalog as too low will be required to justify the higher cost by submitting supporting evidence and to certify that the estimate is made in good faith. *Id.* The Media Bureau will review the required justification and may accept it or substitute a different amount for purposes of calculating the initial allocation. *Id.* at 6818, para. 613.

⁸ To highlight the proposed changes to the Catalog, the appended Catalog illustrates the proposed revisions to the Catalog using strikeout to indicate proposed deletions and italics to indicate proposed substantive additions. See Appendix.

⁹ In addition to any changes to the Reimbursement Form warranted by updates to the Catalog, we will add check boxes to the Reimbursement Form to allow an entity to indicate if it is seeking reimbursement for equipment that includes an optional upgrade or requesting partial payment for a particular expense. See *Incentive Auction R&O*, 29 FCC Rcd at 6822-23, para. 624 ("Eligible stations and MVPDs may elect to purchase optional equipment capability or make other upgrades at their own cost, but only the cost of the equipment without optional upgrades is a reimbursable expense.").

the three-year reimbursement period.¹⁰ To ensure that the baseline costs remain current throughout the reimbursement period, it will be necessary to periodically adjust them to reflect the natural changes in the economy that affect pricing. Accordingly, we propose to modify the baseline costs contained in the Catalog annually based upon the Producer Price Indexes (PPI).¹¹ We propose to rely upon the PPI annual average, specifically the WPUFD4 series, as calculated by the Bureau of Labor Statistics (BLS),¹² rather than the seasonally-adjusted final demand index.¹³ Because prices for broadcaster and MVPD equipment and services are not affected by cyclical factors such as weather or holidays, we tentatively conclude to use the annual average throughout the three-year reimbursement period because of its reliability and consistency.¹⁴ We propose to update the costs in the Catalog once each year after the annual average PPI value for the WPUFD4 dataset is released by the BLS. We seek comment on this proposal.

Comment Filing Procedures. Pursuant to sections 1.415 and 1.419 of the Commission's rules,¹⁵ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).¹⁶

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the

¹⁰ See *Reimbursement Form PN*, 30 FCC Rcd at 11702, n.9 (“[W]e intend to seek comment on the appropriate means of adjusting the baseline costs for the commonly purchased equipment and services included in the catalog from year-to-year.”). The reimbursement period is the period ending three years after the completion of the forward auction. See 47 CFR § 73.3700(a)(13). See also 47 U.S.C. § 1452(b)(4)(D).

¹¹ The PPI program measures the average change over time in the selling prices received by domestic producers for their output. The prices included in the PPI are from the first commercial transaction for many products and some services. Bureau of Labor Statistics, U.S. Department of Labor, *Producer Price Indexes*, <http://www.bls.gov/ppi/home.htm> (last visited Oct. 11, 2016).

¹² The PPI, which is widely used as an economic indicator to measure average change in production costs over time, applies the Final Demand-Intermediate Demand system as its primary aggregation structure to incorporate goods, services, construction, government purchases, and exports in its data. Bureau of Labor Statistics, U.S. Department of Labor, *Frequently Asked Questions, Question 2: How are PPIs used?*, <http://www.bls.gov/ppi/ppifaq.htm#2> (last visited Oct. 11, 2016).

¹³ Bureau of Labor Statistics, U.S. Department of Labor, *Data Tools: Price Index Commodity Data: Final demand - WPUFD4*, <http://data.bls.gov/cgi-bin/surveymost?wp> (last visited Oct. 11, 2016).

¹⁴ We believe the reliability of the annual average, as opposed to a seasonally-adjusted final demand, makes it appropriate to use this index throughout the three-year reimbursement period. Although the broadcast equipment index is a robust categorical match, BLS states that specific indexes are most likely to be discontinued or pose gaps in availability. Bureau of Labor Statistics, U.S. Department of Labor, *Frequently Asked Questions, Question 18: What price index should I use for escalation?*, <http://www.bls.gov/ppi/ppifaq.htm#18> (last visited Oct. 11, 2016). The broader wired telecommunications index was expanded in 2012 to include telephone service, internet service, bundled services, and advertising. Bureau of Labor Statistics, U.S. Department of Labor, *Producer Price Indexes for Wired Telecommunications Carriers—NAICS 517110*, <http://www.bls.gov/ppi/naics517110.htm> (last visited Oct. 11, 2016). A comparison between the final demand index and the wired telecommunications index of previous years indicates favorable terms for broadcasters under the annual average, not seasonally-adjusted final demand index. Bureau of Labor Statistics, U.S. Department of Labor, *Databases, Tables & Calculators by Subject, Wired telecommunications carriers*, <http://data.bls.gov/timeseries/PCU517110517110>, (last visited Oct. 11, 2016).

¹⁵ 47 CFR §§ 1.415, 1.419. The Notice of Proposed Rulemaking in GN Docket No. 12-268 included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. § 603, exploring the potential impact of the Commission's proposal on small entities. *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, app. B at 12523-44, paras. 1-95 (2012). The matters discussed in this Public Notice do not modify in any way the IRFA we previously issued.

¹⁶ *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

ECFS: <http://apps.fcc.gov/ecfs/>.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Ex Parte Presentations. The proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁷ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies).¹⁸ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the rules. In proceedings governed by § 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Additional Information. For additional information on this proceeding, contact Pamela Gallant, Pamela.Gallant@fcc.gov, (202-418-0614), or Raphael Sznajder, Raphael.Sznajder@fcc.gov, (202-418-1648), of the Media Bureau, Video Division. Press contact: Charles Meisch, Charles.Meisch@fcc.gov, (202-418-2943), of the Incentive Auction Task Force.

¹⁷ 47 CFR § 1.1200 *et seq.*

¹⁸ 47 CFR § 1.1203.

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